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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,217	03/22/2004	Greg E. McRae	091078.1259	3298
5073	7590	04/11/2007		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT 3781	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	04/11/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/11/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mike.furr@bakerbotts.com  
ptomail1@bakerbotts.com

## Office Action Summary

**Application No.**

10/807,217

**Applicant(s)**

MCRAE, GREG E.

**Examiner**

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 37-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-42 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/12/05; 3-22-04</u> . | 6) <input type="checkbox"/> Other: ____.  |

This application contains claims directed to the following patentably distinct species:

Group I: Fig. 1 and

Group II: Fig. 7A.

The species are independent or distinct because invention I has a pivoting lid and Invention II has a lid closed and latched by rotation within an L- shaped slot.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 13 appears generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

During a telephone conversation with Mr. Chad Walters on September 26, 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 37-42 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Fuchs.

Claim 13 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by EPO reference No. (EP 0752555) to Poillucci.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over German reference No. (DE 20004612) to Kewitz in view of Fuchs.

Kewitz discloses an underground tank shroud assembly comprising a shroud 11 with top and bottom regions and a shroud lid 12, the lid is pivotable about a hinge 13. Kewitz discloses the shroud assembly in combination with an underground tank 20 with a riser 15, the riser is enclosed by the shroud and lid. Kewitz discloses the invention except for the shroud lid having two hinge couplings. Fuchs teaches a cover arrangement capable of performing as a shroud with a lid having two hinge couplings. It would have been obvious to modify the single hinge

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coupling arrangement of Kewitz to have a second additional hinge coupling to provide the ability of rotating the shroud lid to either of two opposed sides of a shroud to alter the access to prevent wind or gravity from closing the top shroud opening.

Re claims 5-7, 13, 17, 18 and 28-30, Official notice is taken that plastic shroud materials and specifically, polyethylene and polyurethane, are well known. It would have been obvious to modify a metal shroud to be plastic to provide weight reduction and cost reduction due to lighter, less expensive plastic material.

Re claims 4, 16 and 27, Official notice is taken that nut and bolt hinge assemblies are well known in the lid art. It would have been obvious to modify the hinge couplings to have a nut and bolt assembly so that the lid can be easily replace if it should become damaged.

Re claims 8, 19 and 31, Fuchs teaches a conical shaped shroud. It would have been obvious to modify the shroud to be conical to widen the top opening of the shroud to provide easier access and more space at the top opening.

Re claims 10, 21 and 33, Official notice is taken that LPG storage is well known. It would have been obvious to modify the underground tank to be capable of storing LPG as a matter of design choice to adapt the tank to store the desired product.

Re claims 9, Kewitz discloses the base region configured to conform to a convex top tank surface. Re claim 11, Kewitz discloses the shroud bracket slot 21 and tank bracket 14.

Re claim 12, It would have been obvious to modify the opening dimensions as a matter of design choice to fit the equipment ( riser, valves etc.) to be housed therein as a matter of design choice and no bigger than necessary to reduce the waste of material.

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Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kewitz in view of Fuchs as applied to claim 24 above, and further in view of Palazzo (6024243).

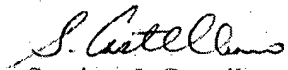
The combination discloses the invention except for the hole in the lid. Palazzo teaches a hole in lid 66 for riser 74 (see Fig. 8). It would have been obvious to provide an access hole in the lid to provide access to the riser to alleviate the need to open the lid each time the riser needs to be accessed or to vent the riser to the atmosphere.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc